

Christian E. Kernkamp, Esq.  
KERNKAMP LAW, APC  
1801 Century Park E. 24 Fl.  
Los Angeles, CA 90067  
(213) 214-3030  
[ck@kernkamplaw.com](mailto:ck@kernkamplaw.com)

December 17, 2022

**VIA ECF**

Hon. Daniel J. Stewart  
James T. Foley United States Courthouse  
445 Broadway, Albany, NY 12207

**RE: Variscite NY One, Inc. v. State of New York, et al. – Response to Letter Request for  
Adjournment, 1:22-cv-01013-GLS-DJS**

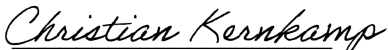
Dear Judge Stewart:

Plaintiff hereby opposes Defendants' request that the Court adjourn the January 4, 2022 Rule 16 conference. Defendants' true purpose in seeking an adjournment is to avoid their discovery obligations. The Court should deny Defendants' request and hold the Rule 16 conference on January 4, 2023. More importantly, the Court should deem the parties' conference of counsel to have occurred on December 14 (the deadline) so that discovery may proceed, notwithstanding that Defendants refused to participate in the conference in order to delay the opening of discovery.

On approximately December 6, 2022, Plaintiff served early Requests for Production of Documents under Rule 26(d). Responses are due 30 days from the conference of counsel under Rule 34(b)(2)(A). In multiple emails, Defense counsel has taken the position that Defendants have no obligation to respond to Plaintiff's Requests for Production by citing to irrelevant Local Rules. Defense counsel further refused to hold the conference of counsel by the December 14, 2022 deadline, despite multiple requests from Plaintiff's counsel.

Defendants' only basis for seeking an adjournment of the conference is their pending Motion to Dismiss. That would not be a basis to adjourn the conference under typical circumstances, but it is even less appropriate here because the Court has already found Plaintiff has a likelihood of success in the litigation and has issued a Preliminary Injunction.

Sincerely,



Christian E. Kernkamp, Esq.  
Admitted Pro Hac Vice  
New York Reg. No.: 5721923  
*Attorney for Plaintiff*

cc: all counsel of record (via ECF)